

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs at Jackson August 7, 2007

**STATE OF TENNESSEE v. MARIA A. DILLS**  
**Appeal from the Circuit Court for Dickson County**  
**No. CR7695 George C. Sexton, Judge**

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**No. M2006-02161-CCA-R3-CD - Filed September 21, 2007**

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A Dickson County jury convicted the defendant of one count of driving under the influence (DUI), second offense, a Class A misdemeanor, one count of violating the implied consent law, a Class A misdemeanor,<sup>1</sup> one count of driving on a revoked license, a Class B misdemeanor, and one count of leaving the scene of an accident, a Class C misdemeanor. On appeal, the defendant contends that the trial court erred in denying her pre-trial motion to suppress statements made to police inside her residence because the statements resulted from custodial interrogation and were given without proper Miranda warnings. The defendant also contends that the evidence produced at trial was insufficient to support her convictions. After reviewing the record, we conclude that the trial court properly denied the defendant's motion to suppress her statements, and that the evidence produced at trial was sufficient to support the defendant's convictions. Accordingly, we affirm the judgments of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court**  
**Affirmed**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which DAVID H. WELLES and JAMES CURWOOD WITT, JR., JJ., joined.

Joseph L. Hornick, Dickson, Tennessee, for the appellant, Maria A. Dills.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilber, Assistant Attorney General; Dan M. Alsobrooks, District Attorney General; R. Stephen Powers, Assistant District Attorney General, for the appellee, State of Tennessee.

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<sup>1</sup>The defendant is not appealing this conviction.

## OPINION

According to the Agreed Statement of the Evidence submitted as part of the record,<sup>2</sup> at the suppression hearing, Sergeant Donnie Young with the Dickson County Sheriff's Department testified that on May 16, 2004, he received a radio call advising police to be on the lookout for a black GMC Yukon belonging to the defendant, Maria Dills, that might have been involved in an accident. The call indicated that the vehicle could be located at a particular address on Highway 48 South in Dickson. Sergeant Young testified that he knew the broadcast address was the defendant's residence, and that because he was close to the address, he proceeded to the defendant's residence. Upon arriving there, he found a black GMC Yukon matching the description of the vehicle being sought in connection with the earlier accident. Sergeant Young testified that he "made contact" with the defendant and waited for Officer Kenny Brown with the Dickson Police Department to arrive, as Officer Brown had investigated the earlier accident reportedly involving the defendant's vehicle.

Kenny Brown, who by the date of the suppression hearing had begun work as a Deputy Sheriff with the Dickson County Sheriff's Department, testified that on the date of the accident, he was employed with the Dickson Police Department. He testified that he responded to a hit and run accident on Highway 46 South in Dickson. After investigating the matter, Deputy Brown determined that the vehicle involved in the accident was a black GMC Yukon possibly belonging to the defendant. Deputy Brown broadcast a message to area law enforcement officers advising them to be on the lookout for the defendant's vehicle and providing the defendant's home address. Deputy Brown testified that shortly after broadcasting the message, he received a radio call from Sergeant Young informing him that Sergeant Young had located the defendant's vehicle at her residence. After receiving the call, Deputy Brown proceeded to the defendant's residence.

Deputy Brown testified that upon arriving at the defendant's residence, he went to the front door, went into the house, and asked to speak with the defendant, who Deputy Brown testified was "right inside the front door." After asking to speak with the defendant,<sup>3</sup> Deputy Brown testified that he "immediately began a conversation with her," asking the defendant about the black Yukon, whether she was driving the vehicle, and if she had been drinking. Deputy Brown testified that he believed the defendant to be intoxicated because during their conversation she was unsteady on her feet, became sick, and smelled of alcohol. Deputy Brown testified that during their conversation, the defendant "admitted to driving, admitted to drinking, and admitted to leaving the scene [of the accident] because she was scared." The defendant refused to submit to field sobriety tests or a

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<sup>2</sup>Transcripts of the suppression hearing, trial, and hearing on the defendant's motion for new trial were not submitted as part of the record. Additionally, the Statement of Evidence does not address the motion for new trial hearing.

<sup>3</sup>The exact substance of the questioning and answering that occurred between Deputy Brown and the defendant is unknown, as the Agreed Statement of Evidence merely summarizes the interaction between the police and the defendant within the defendant's home.

breathalyzer test. Based on his investigation, Deputy Brown arrested the defendant for driving under the influence, driving on a revoked license, and violation of the implied consent law.

On cross-examination, Deputy Brown testified that upon arriving at the defendant's residence, he immediately made contact with the defendant. Deputy Brown testified that the defendant was not free to "leave the scene"<sup>4</sup> should she have chosen to do so. Furthermore, Deputy Brown stated that the defendant was questioned "as the target of his investigation," and that he did not advise the defendant of her rights.

After Deputy Brown's testimony, the state rested. The defendant did not present any witnesses on her behalf. The trial court ruled that because the defendant's statements were made during a preliminary investigation, rather than a custodial investigation, the defendant's statements were not subject to exclusion for lack of Miranda warnings and were therefore admissible at trial. The trial court therefore overruled the defendant's motion to suppress, and the case then proceeded to trial.

The two officers, who were the state's only witnesses at trial, repeated the substance of their suppression hearing testimony with some additions. Sergeant Young testified that when he arrived at the defendant's residence, he felt the Yukon's engine and noticed that it was "warm." He also stated that there was some damage to the front of the SUV. Deputy Brown testified that his initial response time to the accident site, which was the parking lot of a Waffle House restaurant, was five to ten minutes. He stated that he was at the accident scene for fifteen to twenty minutes before traveling to the defendant's residence, which was located ten to twelve miles from the Waffle House. The record is unclear as to how long it took the officer to travel this distance. Deputy Brown admitted that he did not see the defendant drive the SUV at any point during the evening, and that reasons other than intoxication exist for a person becoming sick to her stomach.

The defendant again declined to present witnesses on her behalf. The jury found the defendant guilty of one count of DUI, second offense,<sup>5</sup> one count of driving on a revoked license, one count of leaving the scene of an accident, and one count of violating the implied consent law. This appeal of the first three listed convictions follows.

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<sup>4</sup>It is unclear whether the officer meant that the defendant was not free to leave the scene of the earlier accident or was not free to leave her residence, where she was being questioned.

<sup>5</sup>According to the record, the jury initially found the defendant guilty of driving under the influence. After that verdict, the state introduced a certified copy of the defendant's previous DUI conviction, and the jury subsequently found the defendant guilty of DUI, second offense.

## SUPPRESSION OF DEFENDANT'S STATEMENT

On appeal, the defendant contends that the trial court erred in failing to grant her motion to suppress statements made to police inside her residence the night of the accident. The defendant asserts that her questioning constituted a custodial interrogation, and because she was not given Miranda warnings prior to the interrogation, her statements to police should have been suppressed. The trial court found that the statements were the result of a preliminary investigation, and because Miranda warnings are not required in preliminary questioning, there was no need to suppress the defendant's statements to police.

A review of a trial court's ruling regarding a motion to suppress evidence presents mixed questions of law and fact. State v. Walton, 41 S.W.3d 75, 81 (Tenn. 2001). "[I]ssues of whether a defendant was placed in custody, interrogated, or voluntarily gave a confession are primarily issues of fact." Id. (citations omitted); State v. Anderson, 937 S.W.2d 851, 855 (Tenn. 1996). Therefore, "a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). "Questions about witness credibility and 'resolution of conflicts in the evidence are matters entrusted to the trial judge.'" Walton, 41 S.W.3d at 81 (quoting Odom, 928 S.W.2d at 23). "Testimony presented at trial may be considered by an appellate court in deciding the propriety of the trial court's ruling on a motion to suppress." State v. Perry, 13 S.W.3d 723, 737 (Tenn. Crim. App. 1999). However, the appellate court's review of the trial court's application of law to the facts is conducted under a de novo standard of review. Walton, 41 S.W.3d at 81 (citations omitted).

Both the Fifth Amendment to the United States Constitution and article I, section 9 of the Tennessee Constitution protect a person against compelled self-incrimination. The Supreme Court has held that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966). "Pursuant to Miranda, custodial interrogation entails 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.'" State v. Goss, 995 S.W.2d 617, 628 (Tenn. Crim. App. 1998) (quoting Miranda, 384 U.S. at 444). The protections provided under Miranda do not apply in every instance where a police officer questions a suspect; rather, these protections only apply "when the defendant is in custody and is subjected to questioning or its functional equivalent." Walton, 41 S.W.3d at 82 (emphasis added) (citing Rhode Island v. Innis, 446 U.S. 291, 100 S. Ct. 1682 (1980)). "Absent either one of these prerequisites, the requirements of Miranda are not implicated." Id. For instance, on-the-scene questioning does not require Miranda warnings. Miranda, 384 U.S. at 477.

\_\_\_\_\_ Our supreme court recently provided this analysis of whether a person is being interrogated for Miranda purposes:

Interrogation “refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” Innis, 446 U.S. at 301, 100 S. Ct. 1682. Interrogation also includes any “practice that the police should know is likely to evoke an incriminating response from a suspect.” Id. The definition of interrogation focuses primarily upon the accused’s perception rather than on the police officer’s intent. Id. at 301, 100 S. Ct. 1682. However, the officer’s intent may be relevant to determine whether the officer should have known his or her words or actions were reasonably likely to invoke an incriminating response. Id. at 301 n.7, 100 S. Ct. 1682.

State v. Sawyer, 156 S.W.3d 531, 534 (Tenn. 2005). In this case, although the exact substance of the conversation between the defendant and police is absent from the record, the statement of evidence indicates that Deputy Brown questioned the defendant about the black Yukon, whether she was driving the vehicle, and if she had been drinking. In our view, the officer should have known that his questions, which ultimately led the defendant to confess to driving under the influence and leaving the scene of the accident, were reasonably likely to invoke an incriminating response from the defendant. Therefore, the question of whether the defendant should have been given Miranda warnings prior to her interrogation will turn on whether the defendant was “in custody” at the time she was questioned.

In determining whether an individual is “in custody” and therefore entitled to Miranda warnings, our supreme court has held:

the appropriate inquiry . . . is whether, under the totality of the circumstances, a reasonable person in the suspect’s position would consider himself or herself deprived of movement to a degree associated with a formal arrest. The test is objective from the viewpoint of the suspect, and the unarticulated subjective view of law enforcement officials that the individual being questioned is or is not a suspect does not bear upon the question.

Anderson, 937 S.W.2d at 855. The Anderson court provided a non-exclusive list of factors that may be used to evaluate whether a person is in custody for Miranda purposes. These factors include

the time and location of the interrogation; the duration and character of the questioning; the officer’s tone of voice and general demeanor; the suspect’s method of transportation to the place of questioning; the number of police officers present; any limitation on movement or other form of restraint imposed on the suspect during the interrogation; any interactions between the officer and the suspect, including the words spoken by the officer to the suspect, and the suspect’s verbal or nonverbal

responses; the extent to which the suspect is confronted with the law enforcement officer's suspicions of guilt or evidence of guilt; and finally, the extent to which the suspect is made aware that he or she is free to refrain from answering questions or to end the interview at will.

Id. (citations omitted). The determination of whether a person was in custody is a “fact specific inquiry. Application of the appropriate, relevant factors to the facts is a task for which the trial court is especially suited.” Id.

Applying the Anderson factors to the facts of the present case is a somewhat difficult task, given the absence of transcripts from the suppression hearing and trial. For instance, nothing in the record provides insight into the interrogating officer's tone of voice and general demeanor, the duration and character of his questioning, and the substance of the interaction between the officers and the defendant. What evidence that does exist weighs in the state's favor. Only two police officers were present at the defendant's house, and only one officer, Deputy Brown, testified that he asked questions of the defendant.<sup>6</sup> Although Deputy Brown testified that the defendant was the “target” of his investigation, and that the defendant, in his opinion, “was not free to leave the scene should she have chosen to do so,” the record does not indicate that the officer communicated these opinions to the defendant. Furthermore, the defendant was questioned inside her home. Unlike a traditional arrest, where the suspect's movement is confined, the defendant's freedom to move within her home was unrestrained. Additionally, several federal courts have held that “absent an arrest, interrogation in the familiar surroundings of one's own home is generally not deemed custodial.” United States v. Newton, 369 F.3d 659, 675 (2d Cir. 2004); see Beckwith v. United States, 425 U.S. 341, 347, 96 S. Ct. 1612, 1616 (1976); Hicks v. United States, 382 F.2d 158, 161 (D.C. Cir. 1967); Thompson v. United States, 382 F.2d 390, 393 (9th Cir. 1967). Given the evidence, the defendant has failed to show that the trial court erred when it concluded that the defendant was not “in custody,” and therefore not subject to Miranda warnings, when the police questioned her inside her home. Therefore, the defendant is not entitled to relief on this issue.

### SUFFICIENCY OF EVIDENCE

The defendant next contends that the evidence produced at trial was insufficient to support her convictions. The defendant asserts that her convictions were based solely on her confession, results that run afoul of the “corpus delicti” principle under which a defendant's conviction cannot be based solely upon her confession. We disagree with the defendant's arguments.

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<sup>6</sup>It is unclear from the record whether the first officer on the scene, Sergeant Young, asked questions of the defendant or entered the defendant's home. The record indicated that Sergeant Young “made contact” with the defendant, but it also indicated that he “did no investigation” in this case.

An appellate court's standard of review when the defendant questions the sufficiency of the evidence on appeal is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979) (emphasis in original). The appellate court does not reweigh the evidence; rather, it presumes that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the state. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Questions regarding witness credibility, conflicts in testimony, and the weight and value to be given to evidence were resolved by the jury. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). A guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt, and on appeal the defendant has the burden of illustrating why the evidence is insufficient to support the jury's verdict. Id.; State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

The defendant was convicted of driving under the influence in violation Tennessee Code Annotated Section 55-10-401. The statute states, in pertinent part:

(a) It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park or any apartment house complex, or any other premises which is generally frequented by the public at large, while:

(1) Under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system;

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Tenn. Code Ann. § 55-10-401(a)(1). The defendant was also convicted of leaving the scene of an accident in violation of Tennessee Code Annotated section 55-10-102, and of driving on a revoked license in violation of Tennessee Code Annotated section 55-50-504. For a defendant to be convicted of any of these offenses, the state must prove beyond a reasonable doubt that the defendant was actually driving a vehicle (or in the case of the DUI statute, was driving or in physical control of a vehicle) at the time the violation allegedly occurred.

Our supreme court has held that "[i]t is a well-established principle of law in this state that a conviction cannot be founded solely upon a defendant's confession, and our cases have long required some corroborating evidence in order to establish the corpus delicti." State v. Smith, 24 S.W.3d 274, 281 (Tenn. 2000) (citing Ashby v. State, 124 Tenn. 684, 697-98, 139 S.W. 872, 875 (1911)). The term "corpus delicti" refers to "the body of the crime [or] evidence that a crime was committed at the place alleged in the indictment," and the state needs "only slight evidence of the

corpus delicti . . . to corroborate a confession and sustain a conviction.” Id. In other words, the evidence used to corroborate a confession “need not be as convincing as the evidence necessary to establish a corpus delicti in the absence of any confession.” Ricketts v. State, 192 Tenn. 649, 655, 241 S.W.2d 604, 606 (1951).

In this case, the evidence produced at trial showed that the defendant was intoxicated at the time she was questioned by police, as the arresting officer testified that the defendant smelled of alcohol, was unsteady on her feet, and became sick. The defendant’s criminal record indicates that the defendant’s driver’s license had been revoked at the time of her arrest, and that she had a previous DUI conviction. The evidence also showed that the defendant’s SUV had been in and left the scene of an accident, as Deputy Brown’s investigation identified that the defendant’s SUV had hit another vehicle at the Waffle House and then left the scene, and Sergeant Young also observed that the defendant’s SUV had some front-end damage. Although there is little evidence in the record for us to determine whether the defendant was actually driving her vehicle the evening of the accident, or whether she was driving while intoxicated, we are mindful that evidence needed to establish corpus delicti and corroborate a defendant’s confession need only be slight. Smith, 24 S.W.3d at 281. In this case, the evidence detailed above, Sergeant Young’s testimony that the engine of the defendant’s SUV was warm at the time he arrived at the defendant’s residence, testimony that the defendant was located “just inside her doorway” when approached, and the defendant’s statements to police were sufficient to establish corpus delicti and lead a reasonable jury to convict the defendant.

Furthermore, the defendant has the burden to provide an adequate record for appellate review. Tenn. R. App. P. 24(b); State v. Taylor, 992 S.W.2d 941, 944 (Tenn. 1999). “When the record is incomplete with respect to a challenged issue, this court cannot determine whether the trial court correctly rejected the defendant’s claims and must conclusively presume that the trial court’s determination was supported by the record.” State v. Clementine Myers, No. M2005-01853-CCA-R3-CD, slip op. at 2 (Tenn. Crim. App. Jan. 19, 2007) (citing State v. Draper, 800 S.W.2d 489, 492 (Tenn. Crim. App. 1990), perm. app. denied, (Tenn. May 29, 2007)). Having only the Agreed Statement of Evidence upon which to rely, we conclude that the evidence produced at trial was sufficient for the jury to find the defendant guilty of the charged offenses beyond a reasonable doubt. Accordingly, the defendant is not entitled to relief on this issue.



CONCLUSION

Upon consideration of the foregoing and the record as a whole, the judgments of the trial court are affirmed.

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D. KELLY THOMAS, JR., JUDGE